

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

CHERYLANN JONES,

Plaintiff, **ANSWER BY HUNTLEY,
SMITH, AND O'BRIEN TO
AMENDED COMPLAINT**

-against-

THE CITY OF NEW YORK, POLICE OFFICER
ROBERT O'BRIEN, SGT. DWIGHT SMITH, and
DETECTIVE EBONY HUNTLEY,

JURY TRIAL DEMANDED

07 Civ. 5625 (JSR)

Defendants.

----- X

Defendants Detective Ebony Huntley, Sergeant Dwight Smith, and Police Officer Robert O'Brien, by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to the Amended Complaint, respectfully allege upon information and belief as follows.¹

1. Deny the allegations set forth in paragraph "1" of the Amended Complaint, except admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the Amended Complaint.
3. Deny the allegations set forth in paragraph "3" of the Amended Complaint.
4. Deny the allegations set forth in paragraph "4" of the Amended Complaint.
5. Deny the allegations set forth in paragraph "5" of the Amended Complaint.
6. Deny the allegations set forth in paragraph "6" of the Amended Complaint, except admit that plaintiff purports to bring this action and invoke the jurisdiction of this Court as stated therein.

¹ An answer to the Amended Complaint was filed on behalf of defendant City of New York on or about September 6, 2007.

7. Deny the allegations set forth in paragraph “7” of the Amended Complaint, except admits that plaintiff purports to bring this action in this venue as stated therein.

8. Deny the allegations set forth in paragraph “8” of the Amended Complaint, except admit that a document purporting to be a notice of claim was received by the City of New York Office of the Comptroller on March 7, 2007.

9. Defendants state that the allegations set forth in paragraph “9” of the Amended Complaint constitute legal conclusions to which no response is required.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Amended Complaint.

11. Defendants state that the allegations set forth in paragraph “11” of the Amended Complaint constitute legal conclusions to which no response is required.

12. Defendants state that the allegations set forth in paragraph “12” of the Amended Complaint constitute legal conclusions to which no response is required, except admit that the City is a municipal corporation.

13. In response to the allegations set forth in paragraph “13” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

14. Deny the allegations set forth in paragraph “14” of the Amended Complaint.

15. Deny the allegations set forth in paragraph “15” of the Amended Complaint.

16. Deny the allegations set forth in paragraph “16” of the Amended Complaint.

17. In response to the allegations set forth in paragraph “17” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

18. Deny the allegations set forth in paragraph “18” of the Amended Complaint.

19. Deny the allegations set forth in paragraph “19” of the Amended Complaint.

20. Deny the allegations set forth in paragraph “20” of the Amended Complaint.

21. In response to the allegations set forth in paragraph “21” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

22. Deny the allegations set forth in paragraph “22” of the Amended Complaint.

23. Deny the allegations set forth in paragraph “23” of the Amended Complaint.

24. Deny the allegations set forth in paragraph “24” of the Amended Complaint.

25. In response to the allegations set forth in paragraph “25” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

26. Deny the allegations set forth in paragraph “26” of the Amended Complaint.

27. Deny the allegations set forth in paragraph “27” of the Amended Complaint.

28. Deny the allegations set forth in paragraph “28” of the Amended Complaint.

29. In response to the allegations set forth in paragraph “29” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

30. Deny the allegations set forth in paragraph “30” of the Amended Complaint.

31. Deny the allegations set forth in paragraph “31” of the Amended Complaint.

32. In response to the allegations set forth in paragraph “32” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

33. Deny the allegations set forth in paragraph “33” of the Amended Complaint.

34. Deny the allegations set forth in paragraph “34” of the Amended Complaint.

35. In response to the allegations set forth in paragraph “35” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

36. Deny the allegations set forth in paragraph “36” of the Amended Complaint.

37. Deny the allegations set forth in paragraph “37” of the Amended Complaint.

38. In response to the allegations set forth in paragraph “38” of the Amended Complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

39. Deny the allegations set forth in paragraph “39” of the Amended Complaint.

40. Deny the allegations set forth in paragraph “40” of the Amended Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

41. The Amended Complaint fails to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

42. Any injuries alleged in the Amended Complaint were caused, in whole or in part, by plaintiff’s culpable or negligent conduct.

FOR A THIRD AFFIRMATIVE DEFENSE

43. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

FOR A FOURTH AFFIRMATIVE DEFENSE

44. Plaintiff provoked any incident.

FOR A FIFTH AFFIRMATIVE DEFENSE

45. Plaintiff's claims are barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

FOR A SIXTH AFFIRMATIVE DEFENSE

46. Defendants have not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have the defendants violated any act of Congress providing for the protection of civil rights.

FOR A SEVENTH AFFIRMATIVE DEFENSE

47. There was probable cause for plaintiff's arrest and prosecution.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

48. At all times relevant to the acts alleged in the complaint, the defendants acted reasonably in the proper and lawful exercise of their discretion

WHEREFORE, defendants Detective Ebony Huntley, Sergeant Dwight Smith, and Police Officer Robert O'Brien respectfully request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 20, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants City, Huntley, Smith, and O'Brien
100 Church Street, Room 3-212
New York, New York 10007
(212) 788-0823

By: 
Hillary A. Frommer (HF 9286)
Senior Counsel

Index No. 07 Civ. 5625 (JSR)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHERYLANN JONES,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER ROBERT
O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE
EBONY HUNTLEY,

Defendants.

**ANSWER BY HUNTLEY, SMITH, AND O'BRIEN TO
AMENDED COMPLAINT**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants City, Huntley, Smith,
and O'Brien
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Hillary A. Frommer
Tel: (212) 788-0823
NYCLIS No.*

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for